

1

2

3

4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

5

6

UNITED STATES OF AMERICA,
Plaintiff,
v.
DAVID LEIGH COOK,
Defendant.

7

8

9

10

11

Case No. [19-cr-00172-JD-1](#)

**ORDER RE HABEAS PETITION AND
COMPASSIONATE RELEASE
MOTION**

Re: Dkt. Nos. 72, 84

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

On October 15, 2020, the Court issued an order stating that it had “received a letter from defendant” but because “[h]e is represented by counsel, . . . all communications with the Court should come from his attorney.” Dkt. No. 70. While he remained represented by attorney Christopher J. Cannon, Cook made another pro se filing: a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255 that asserted, among other things, the ineffective assistance of counsel. Dkt. No. 72. Thereafter, the Court ordered attorney Cannon withdrawn as counsel for Cook based on the conflict created by Cook’s habeas petition, Dkt. No. 76, and instead appointed attorney Karen L. Landau to represent Cook “solely for the limited purpose of petitioning the Court for compassionate release and litigating his 2255 motion for writ of habeas corpus.” Dkt. No. 79. Defendant Cook’s § 2255 motion that was filed pro se, Dkt. No. 72, was consequently superseded by the circumstances, and the Court deems it withdrawn given that Cook did not renew it through his new counsel who was appointed in part to litigate that motion.

Attorney Landau has since also been permitted to withdraw from her representation of Cook, Dkt. No. 95, but the compassionate release motion she filed on Cook’s behalf remains pending. Dkt. No. 84. That motion sought a reduction in Cook’s sentence under 18 U.S.C. § 3582(c)(1) “based on the combination of his serious medical comorbidities: heart disease,

1 hypertension, diabetes, morbid obesity, chronic obstructive pulmonary disease and the COVID-19
2 outbreak currently raging in society and within the Federal BOP.” *Id.* at 1.

3 The motion is denied. Cook says he is at a heightened risk of death or severe illness from
4 COVID-19. But he received the first dose of the Moderna vaccine on March 4, 2021, Dkt. No. 99
5 (Lee Decl., Ex. 1) at USA-014, which was the same day he filed for compassionate release.
6 Cook’s reply brief acknowledges that he “has received his first dose of vaccine.” Dkt. No. 91 at 7.
7 The Moderna vaccine has been shown to be over 90% effective at preventing COVID-19 within
8 14 days of the first dose, and so the risk to Cook appears to be minimal. *See, e.g.*, Lindsey R.
9 Baden et al., Efficacy and Safety of the mRNA-1273 SARS-CoV-2 Vaccine, 384 New Eng. J.
10 Med. 403, 411 (2021). Consequently, there are not “extraordinary and compelling” reasons for
11 release. 18 U.S.C. § 3582(c)(1)(A)(i).

12 **IT IS SO ORDERED.**

13 Dated: June 18, 2021



JAMES DONATO
United States District Judge